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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/806,396	03/23/2004	Isao Miyachi	250786US3X	2344

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OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.		
1940 DUKE STREET		
ALEXANDRIA, VA 22314		

EXAMINER	
COLLADO, CYNTHIA FRANCISCA	

ART UNIT	PAPER NUMBER
3618	

NOTIFICATION DATE	DELIVERY MODE
08/13/2007	ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

patentdocket@oblon.com
oblonpat@oblon.com
jgardner@oblon.com

Office Action Summary	Application No. 10/806,396	Applicant(s) MIYACHI, ISAO	
	Examiner Cynthia F. Collado	Art Unit 3618	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 May 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11, 14, 17-23 and 25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 24 is/are allowed.
- 6) ☒ Claim(s) 11, 14, 17-23 and 25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 23 March 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>5/24/2007</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Amendment

Applicant submitted an amendment dated May 11, 2007, wherein claims 11 and 14 were amended to incorporate claims 12 and 15. Cancelled claims 13 and 16 have been rewritten in independent form and new claims 24 and 25. Applicant provided remarks for reconsideration.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 11-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Kobayashi et al (US Patent No.5, 671,820).

Regarding claim 11, Kobayashi discloses a lower traveling body (fig 1, element 1), an upper rotating body rotatably mounted on the lower traveling body, the upper rotating body having an upper frame, an engine (fig 3, element 10) and a radiator (fig 3, element 14), a guard cover pivotally provided to cover at least the radiator (fig 1, element 6), a radiator duct (fig 3, element Sa) extending between the radiator (fig 3, element 14) and the guard cover (fig 3, element 19) so as to guide cooling air passing the guard cover to the radiator and a radiator support provided on the upper frame,

wherein radiator duct and the guard cover are mounted to the upper rotating body via the radiator support (column 5, lines 20-30).

Regarding claim 14, Kobayashi discloses a lower traveling body (fig 1, element 1), an upper rotating body rotatably mounted on the lower traveling body, the upper rotating body having an upper frame an engine including a muffler (column 7, lines 28-32), a bonnet pivotally provided to cover at least the engine (fig 1, element 6), side panel arranged on one lateral side at the rear part of an openable hood for covering the back side of the engine (fig 1, element 6B) and a mounting column provided on the upper frame (fig 1, mounting column located between element 1 and element 3), wherein the bonnet and side panel are mounted to the upper rotating body via the mounting column (column 5, lines 20-30).

Regarding claim 17, Kobayashi discloses a radiator provided on the upper rotating body and a radiator support provided on the upper frame (fig 1, element 3), the radiator support provided on one lateral side at a rear part of the upper frame and the mounting column on a lateral side of the rear part of the upper frame opposite the radiator support (fig 3, element 14), and a seat stand mounted to the radiator support and to the mounting column, wherein the seat stand extends between the radiator support and to the mounting column (fig 1, element 7) also (column 5, lines 20-29).

Regarding claim 18, Kobayashi discloses an oil tank and a seat stand, wherein the oil tank and the seat stand are all mounted to the upper supporting body via the radiator support (column 5, lines 38-43).

Art Unit: 3618

Regarding claim 19, Kobayashi discloses a bonnet pivotally provided to cover at least the engine, a muffler cover covered by the bonnet and provided to cover the muffler, and mounting column provided on the upper frame, wherein the bonnet and the muffler cover are mounted to the upper supporting body via the mounting column (fig 6).

Regarding claim 19, Kobayashi discloses a bonnet pivotally provided to cover at least the engine, a muffler cover covered by the bonnet and provided to cover the muffler, and mounting column provided on the upper frame, wherein the bonnet and the muffler cover are mounted to the upper supporting body via the mounting column (fig 6).

Regarding claim 20, Kobayashi discloses a seat stand mounted to the upper supporting body via the mounting column, and fixed cover panel mounted to the upper supporting body via the mounting column (column 5, lines 56-67) also (column 6, lines 1-6).

Regarding claim 21, Kobayashi discloses a radiator support mounted to the upper rotating body at a side of the engine opposite the mounting column (fig 2, elements 14 and 10).

Regarding claim 22 and 23, Kobayashi discloses a radiator, a guard cover pivotally provided to cover at least the radiator, and a radiator duct extending between the radiator and the guard cover so as to guide cooling air passing the guard cover to the radiator, wherein the radiator, the radiator duct and the guard cover are all mounted to the upper supporting body via the radiator support (column 6, lines 25-42).

Regarding claim 25, Kobayashi discloses a lower traveling body, an upper rotating body rotatably mounted on the lower traveling body, the upper rotating body having an upper frame and an engine including a muffler (col 7, lines 28-32), a bonnet pivotally provided to cover at least the engine (fig 1, element 6), a muffler cover covered by the bonnet and provided to cover the muffler (col 7, lines 28-32), and a mounting column provided on the upper frame (col 7, lines 28-32), wherein the bonnet and the muffler column provided on the upper frame, wherein the bonnet and the muffler cover are mounted to the upper rotating body via the mounting column (col 5, lines 20-30).

Allowable Subject Matter

Claim 24 is allowed.

Response to Arguments

Regarding applicant's arguments filed May 11, 2007, with respect to claims 11, 14 and 25, has been fully considered by the examiner however the applicant's remarks conversely are not convincing. In regards to the claim 11, Applicant argues the rejection of Kobayashi fails to disclose a radiator duct extending between the radiator 14 and guard cover 19, conversely In response to applicants arguments, Kobayashi discloses an air passage/duct labeled (Sa) in between figure 3, element 14 (radiator) and fig 3, element 19 (cover) Therefore, the rejection is proper and maintained.

Regarding claim 24, Applicant argues that Kobayashi fails to disclose the canopy support and guard cover mounted to the upper rotating body via the radiator support, however examiner disagrees. Figure 1, element 8 (canopy) clearly displays the canopy on the upper rotating body. Fig 3, element 19 (guard cover) is located on the upper rotating body. Therefore, the rejection is proper and maintained.

Regarding claim 14, applicant argues that the front hood portion 6a is directly mounted to the deck 3, which is not mounted to the upper rotating body via a moving column. Examiner disagrees with applicant. Examiner wants to point out to applicant that fig 1, element 3 is called a swivel deck, in which is capable of swiveling/rotating, for this reason the rejection is proper and maintained.

Regarding claim 25, applicant argues a muffler cover is not described, however column 7, lines 28-32 states that a muffler may be disposed in one of the second and third hood spaces 120B and 120C of the engine hood 6.

Webster's collegiate Dictionary, 10th Edition defines "cover" as " to provide with a covering or top".

The engine hood 6 can be a muffler cover; therefore, the rejection is proper and maintained.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

Art Unit: 3618

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cynthia F. Collado whose telephone number is (571)2728315. The examiner can normally be reached on mon-fri 8-4.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Ellis can be reached on (571)2726914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3618

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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CHRISTOPHER P. ELLIS
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3600